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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/333,379	06/15/1999	LEROY G. HAGENBUCH	189405	4050

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LEYDIG VOIT & MAYER LTD
TWO PRUDENTIAL PLAZA
180 NORTH STETSON SUITE 4900
CHICAGO, IL 606016780

EXAMINER

DAY, HERNG DER

ART UNIT	PAPER NUMBER
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2128

MAIL DATE	DELIVERY MODE
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11/15/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/333,379

Applicant(s)

HAGENBUCH ET AL.

Examiner

Herng-der Day

Art Unit

2128

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-7, 10-26, 29-36, 38, 52-62, 64-77, 82-85 and 87 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-7, 10-26, 29-36, 38, 60-62, 73-77, 82-85 and 87 is/are allowed.
- 6) ☒ Claim(s) 52, 57, 59 and 64-72 is/are rejected.
- 7) ☒ Claim(s) 53-56 and 58 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 August 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 8/30/07.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

1. This communication is in response to Applicants' Amendment ("Amendment") to Office Actions dated March 28, 2007, filed August 28, 2007.

1-1. Claims 1, 10, 21, 31, 52, 60, 64-73, and 82 have been amended. Claims 9, 28, 63, 78-81, and 86 have been canceled. Claims 1-7, 10-26, 29-36, 38, 52-62, 64-77, 82-85, and 87 are pending.

1-2. Claims 1-7, 10-26, 29-36, 38, 52-62, 64-77, 82-85, and 87 have been examined.

Drawings

2. The replacement drawing sheets received on August 28, 2007, are acceptable. The objection to the drawings has been withdrawn.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 64-72 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for making a body of a vehicle, does not reasonably provide enablement for making a body other than of a vehicle. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims.

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4-1. Claims 64-72 are directed to a process of making a body which does not appear to have support in the original disclosure. The specification discloses a process for making a body of a vehicle. However, no information has been disclosed regarding the claimed body if other than of a vehicle. For example, it is unclear regarding the material, shape, or opening, etc. of the claimed body.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 59 and 64-67 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6-1. Claim 59 recites the limitation “the lowest practical vertical location” in line 3 of the claim. There is insufficient antecedent basis for this limitation in the claim.

6-2. Claim 64 recites the limitation “the container” in line 6 of the claim. There is insufficient antecedent basis for this limitation in the claim.

6-3. Claims 65-67 are rejected as being dependent on the rejected claim 64.

Recommendations

7. Claim 1 recites the limitation “angles of repose” in line 6 of the claim. For clarification purposes, the Examiner suggests that “angles of repose” be replaced with “angles of material repose”.

Double Patenting

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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9. Claims 52, 57, and 59 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 2, 8, and 10 of the copending continuation-in-part application no. 09/593,647.

The conflicting claims are all directed to a process of making a body of a vehicle for hauling material. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 2, 8, and 10 of the copending continuation-in-part application no. 09/593,647 contain all the equivalent limitations of claims 52, 57, and 59 of the instant application. In re Goodman (CA FC) 29 USPQ2d 2010 (12/3/1993).

10. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Allowable Subject Matter

11. Claims 1-7, 10-26, 29-36, 38, 60-62, 73-77, 82-85, and 87 are allowed.

12. Claims 52-59 would be allowed once the above rejections under 35 U.S.C. 112, second paragraph, and nonstatutory double patenting rejections are overcome.

Applicants' Arguments

13. Applicants argue the following:

13-1. Paragraphs 4 And 5 - Section 112, First Paragraph

(1) "applicants have elected to amend the claims to remove the offending term and replaced it with the term "body," which is of equal scope." (Page 16, paragraph 5, Amendment)

13-2. Paragraphs 6, 7 And 8 - Section 112, Second Paragraph

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(2) "In claims 1, 21, 31, 52 and 60, the phrase "producing the body in accordance with the set of design parameters" has been amended to read "producing the body in accordance with the adjusted set of design parameters."" (Page 16, paragraph 6, Amendment)

13-3. The Prior Art Rejections Of Paragraphs 9-10

(3) "With these amendments, the claim set now includes only claims not subject to a prior art rejection." (Page 17, paragraph 8, Amendment)

Response to Arguments

14. Applicants' arguments have been fully considered.

14-1. Applicants' argument (1) is not persuasive. The specification discloses a process for making a body of a vehicle. However, no information has been disclosed regarding the claimed body if other than of a vehicle. For example, it is unclear regarding the material, shape, or opening, etc. of the claimed body.

14-2. Applicants' argument (2) is persuasive. The rejections of claims 1, 21, 31, 52, and 60 under 35 U.S.C. 112, second paragraph, in Office Action dated March 28, 2007, have been withdrawn.

14-3. Applicants' argument (3) is persuasive. The rejections of claims 1-7, 12, 19, 21-26, 29, 60-62, and 78-83 under 35 U.S.C. 102(e) in Office Action dated March 28, 2007, have been withdrawn.

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Conclusion

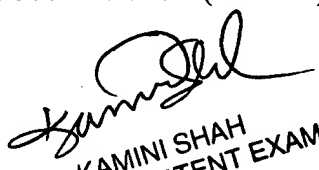
15. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Herng-der Day whose telephone number is (571) 272-3777. The Examiner can normally be reached on 9:00 - 17:30.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: (571) 272-2100.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Kamini S. Shah can be reached on (571) 272-2279. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Herng-der Day
November 8, 2007


KAMINI SHAH
SUPERVISORY PATENT EXAMINER